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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket Nos. 18-175; FCC 18-65]

Assessment and Collection of Regulatory Fees for Fiscal Year 2018

AGENCY: Federal Communications Commission.

ACTION: Final action.

SUMMARY: In this document, the Federal Communications Commission (Commission) makes decisions involving submarine cables, international bearer circuits, and the calculation of cable television subscribers.

DATES: This final action is effective **[INSERT 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Roland Helvajian, Office of Managing Director at (202) 418-0444.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's FY 2018 Report and Order (FY 2018 Report and Order), FCC 18-65, MD Docket No. 18-175 adopted on May 21, 2018 and released on May 22, 2018. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Room CY-A257, Portals II, Washington, DC 20554, and may also be purchased from the Commission's copy contractor, BCPI, Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. Customers may contact BCPI, Inc. via their Web site, <http://www.bcpi.com>, or call 1-800-378-3160. This document is available in

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I. PROCEDURAL MATTERS

A. Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980 (RFA),¹ the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) relating to this Report and Order. The FRFA is located towards the end of this document.

B. Final Paperwork Reduction Act of 1995 Analysis

2. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

C. Congressional Review Act.

3. The Commission will send a copy of this Report & Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

II. INTRODUCTION

In this Report and Order, we address several regulatory fee issues raised in the Further Notice of Proposed Rulemaking that published after the Commission's FY 2017 Report and Order². More

¹ See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law No. 104-121, Title II, 110 Stat. 847 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

specifically, in this Report and Order, we (1) adopt new tiers for calculating regulatory fees for submarine cable systems; (2) decline to adopt a new regulatory fee for international section 214 authorizations; and (3) retain the optional bulk rate calculation for determining the number of subscribers in multiple dwelling units used in the calculation of cable television regulatory fees.

III. REPORT AND ORDER

A. Submarine Cable Regulatory Fees

1. In 2009, the Commission adopted a new methodology for calculating submarine cable regulatory fees, based on a proposal from the submarine cable industry.³ The methodology adopted was a tiered per-cable system, with higher fees for larger systems and lower fees for smaller systems. The Commission concluded that the methodology was in the public interest and competitively neutral because it included both common carriers and non-common carriers; all entities with cable landing licenses would be required to pay this regulatory fee.⁴ At that time, the Commission adopted a five-tier system for the submarine cable industry, but since that date the subsequent growth in the industry has moved all but two systems into the highest tier.⁵ In the 2017 FNPRM, we sought comment on revising the regulatory fee tiers for submarine cable systems.⁶ One commenter, the Submarine Cable Coalition, generally agrees with our proposal to revise the existing tiers.⁷

² See generally Assessment and Collection of Regulatory Fees for Fiscal Year 2017 (Final Rule), 82 FR 44322 (Sept. 22, 2017), 32 FCC Rcd 7057 (2017) (FY 2017 Report and Order) and Assessment and Collection of Regulatory Fees for Fiscal Year 2017 (Further Notice of Proposed Rulemaking), 82 FR 50598 (Nov. 1, 2017), 32 FCC Rcd 7057 (2017) (2017 FNPRM).

³ Submarine Cable Order, 74 FR 22104 (May 12, 2009), 24 FCC Rcd at 4212-4216, paras. 7-18.

⁴ Id., 24 FCC Rcd at 4212-13, paras. 8-9.

⁵ FY 2017 Report and Order, 32 FCC Rcd at 7074, para. 46.

⁶ 2017 FNPRM, 32 FCC Rcd at 7074-75, para. 46.

⁷ Coalition Reply Comments at 3-4, 7-8.

2. We adjust the tiers proposed in the 2017 FNPRM to reflect capacity growth since 2009 when the submarine cable tiers were first established. Specifically, the regulatory fee tiers for submarine cable systems we adopt below add higher thresholds to reflect capacity growth in the industry. Based on this increase in capacity, we believe the tiers better capture varying types of submarine cable operators.

- Systems with capacity equal to or greater than 4,000 Gbps will now pay 16 payment units.
- Systems with capacity equal to or greater than 1,000 Gbps but less than 4,000 Gbps will now pay 8 payment units.
- Systems with capacity equal to or greater than 250 Gbps but less than 1,000 Gbps will now pay 4 payment units.
- Systems with capacity equal to or greater than 50 Gbps but less than 250 Gbps, will pay 2 payment units.
- Systems with capacity less than 50 Gbps will pay 1 payment unit.

3. Under the revised regulatory fee tiers we adopt today, we estimate that approximately half of the submarine cable systems will be in the bottom or middle tiers, while the remaining systems will be in the new highest tier. The FCC will provide proposed rates for submarine cable systems for FY 2018 in future rulemaking.

4. Finally, while the Submarine Cable Coalition contends that non-common carrier submarine cable systems should pay lower fees than common carriers, we note that the Commission adopted a competitively neutral methodology that included both common carriers and non-common carriers in the Submarine Cable Order, based on a consensus proposal from a group of operators,

including at least one member of the Coalition, GU Holdings, Inc., an indirect, wholly-owned subsidiary of Google, Inc.⁸ The Coalition has not provided any evidence to support its claim that we should depart from this competitively neutral methodology and treat non-common carrier submarine cable systems differently from common carrier systems at this time.

B. International Bearer Circuits and Section 214 Authorizations

5. In the 2017 FNPRM, the Commission sought comment on a proposal raised by the Submarine Cable Coalition, that in lieu of regulatory fees for international bearer circuits (IBCs), we should assess a regulatory fee, based on International Bureau FTEs, on every holder of an international section 214 authorization.⁹ SIA supports replacing the satellite IBC fee with a fee on each international section 214 authorization and contends that such a fee for all entities with international section 214 authorizations would be appropriate because the holders of international section 214 authority are “directly involved in international common carrier services and benefit from associated Commission regulation. . . .”¹⁰ The Submarine Cable Coalition contends that adopting a flat fee for all holders of international section 214 authorizations would be an efficient and equitable methodology for assessing regulatory fees.¹¹

6. Other commenters oppose this approach. CTIA argues that assessing a fee based on international section 214 authorizations would change the basis for the IBC fees, which is ownership and use of international circuits, because many international 214 authorization holders only provide resold

⁸ Submarine Cable Order, 24 FCC Rcd at 4208, para. 1 & note 3.

⁹ 2017 FNPRM, 32 FCC Rcd at 7075, para. 48. This proposal was from the Submarine Cable Coalition.

¹⁰ SIA Comments at 6.

¹¹ Coalition Reply Comments at 3.

service and do not have international facilities.¹² AT&T agrees with CTIA and notes that this approach would impose a new IBC regulatory fee on hundreds of entities that do not currently pay IBC fees.¹³ These commenters also explain that because only common carriers hold international section 214 authorizations, this approach would essentially reverse our decision in the FY 2017 Report and Order to include non-common carrier terrestrial IBCs in the IBC regulatory fee methodology.¹⁴ For example, AT&T states that replacing all or part of the IBC fee with a flat fee on international section 214 authorizations would “effectively reverse the Commission’s decisions to provide a competitively neutral IBC fee structure.”¹⁵ CenturyLink argues that entities holding an international 214 authorization but that do not have active international circuits do not receive the benefits of Commission international activities, and therefore should not be subject to regulatory fees.¹⁶ CTIA also states that international section 214 applicants already pay a \$1,155 filing fee with each application and there is no evidence of other International Bureau costs associated with international section 214 authorizations.¹⁷ Commenters also note that such an approach would present administrative difficulties since many carriers have multiple international 214 authorizations and can surrender them if the Commission adopted a per-international section 214 authorization regulatory fee.¹⁸

¹² CTIA Comments at 2-3.

¹³ AT&T Reply Comments at 6; CTIA Comments at 2-3.

¹⁴ CTIA Comments at 4-5; CenturyLink Comments at 5; AT&T Reply Comments at 5-6.

¹⁵ AT&T Jan. 17, 2018 ex parte at 1.

¹⁶ CenturyLink Comments at 5. See also AT&T Reply Comments at 6.

¹⁷ CTIA Comments at 3-4.

¹⁸ CTIA Comments at 5; CenturyLink Comments at 5; AT&T Reply Comments at 6. The Submarine Cable Coalition contends that their proposal would reduce the burden on the International Bureau because of the costs associated with “overseeing redundant international Section 214 licensees.” Submarine Cable Coalition Reply Comments at 9. However, there is no evidence in the record that there are such costs to the International Bureau.

7. We decline to impose regulatory fees on international section 214 authorizations in lieu of our existing IBC regulatory fees for terrestrial and satellite IBCs and submarine cable systems. The record does not demonstrate that this approach is advantageous over the existing scheme established in section 9(g) of the Act to charge the IBC regulatory fee based on active international bearer circuits.¹⁹ The Submarine Cable Coalition's proposal is also problematic because it would exclude non-common carriers from paying the fee. However, the Commission concluded in the FY 2017 Report and Order that regulatory fees should be paid for non-common carrier satellite and terrestrial circuits, as well as submarine cable systems.²⁰ Further, the Submarine Cable Coalition has not shown how a CMRS provider or an ITSP with an international section 214 authorization is subject to regulation or oversight by the International Bureau that would justify an additional annual regulatory fee based on International Bureau FTEs. We recognize that oversight or regulation by the International Bureau is not limited to the processing of international section 214 authorizations.²¹ We are, however, unconvinced at this time that such costs justify requiring hundreds of carriers regulated by other bureaus to pay additional regulatory fees²² based on International Bureau FTEs. For these reasons, we decline to adopt a new regulatory fee category for international section 214 authorizations to replace IBC regulatory fees at this time.

¹⁹ 47 U.S.C. 159(g).

²⁰ FY 2017 Report and Order, 32 FCC Rcd at 7071-2, paras. 34-35.

²¹ For example, International Bureau FTEs could be involved in an international section 214 rulemaking proceeding, a proceeding related to revocation of a carrier's international section 214 authorization, or other matters related to section 214 of the Act.

²² The holders of such authorization pay regulatory fees based on the service provided (e.g., CMRS or ITSP).

C. Cable Television Services – Calculation of Number of Subscribers

8. In the FY 2008 FNPRM, the Commission sought comment on the optional bulk rate calculation for determining the number of subscribers in a multiple dwelling unit or MDU.²³ The methodology for calculating the number of cable subscribers has been the following:

Cable television system operators should compute their number of basic subscribers as follows:

Number of single family dwellings + number of individual households in multiple dwelling unit (apartments, condominiums, mobile home parks, etc.) paying at the basic subscriber rate + bulk rate customers + courtesy and free service. Note: Bulk-Rate Customers = Total annual bulk-rate charge divided by basic annual subscription rate for individual households. Operators may base their count on “a typical day in the last full week” of December [year], rather than on a count as of December 31, [year].²⁴

9. In the 2017 FNPRM, we sought comment on whether we should keep the bulk rate calculation or if, due to the passage of time, we should modify the methodology to more accurately calculate the number of subscribers in a MDU.²⁵ Commenters addressing this issue unanimously support retaining the current optional bulk rate calculation.²⁶ In particular, commenters state that our methodology continues to be “a reasonable and feasible approach to determining the number of MDU subscribers for regulatory fee purposes, and should be retained.”²⁷ And, there is no evidence in the record to support revising or eliminating this optional bulk rate calculation. For these reasons, we retain the bulk rate calculation.

²³ FY 2008 FNPRM, 73 FR 30563 (May 28, 2018), 24 FCC Rcd at 6407-6408, paras. 51-52.

²⁴ This is essentially the same methodology we sought comment on in the FY 2008 FNPRM.

²⁵ 2017 FNPRM, 32 FCC Rcd at 7076, paras. 50-51.

²⁶ ITTA Comments at 1-2; NCTA and ACA Comments at 1-3.

²⁷ NCTA and ACA Comments at 2.

IV. FINAL REGULATORY FLEXIBILITY ANALYSIS

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),²⁸ an Initial Regulatory Flexibility Analysis (IRFA) was included in the 2017 FNPRM.²⁹ The Commission sought written public comment on these proposals including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the IRFA.³⁰

A. Need for, and Objectives of, the Report and Order

2. This Report and Order adopts a revision to the existing tiers for submarine cable regulatory fees.

B. Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA

3. None.

C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

4. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted.³¹ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”³² In addition, the term “small business” has

²⁸ 5 U.S.C. 603. The RFA, 5 U.S.C. 601-612 has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law No. 104-121, Title II, 110 Stat. 847 (1996).

²⁹ Assessment and Collection of Regulatory Fees for Fiscal Year 2017, 32 FCC Rcd 7057 (2017).

³⁰ 5 U.S.C. 604.

³¹ 5 U.S.C. 603(b)(3).

³² 5 U.S.C. 601(6).

the same meaning as the term “small business concern” under the Small Business Act.³³ A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.³⁴ Nationwide, there are a total of approximately 27.9 million small businesses, according to the SBA.³⁵

5. **Wired Telecommunications Carriers.** The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”³⁶ The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.³⁷ Census data for 2012 shows that there were 3,117 firms

³³ 5 U.S.C. 601(3) (incorporating the definition of “small-business concern” from the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

³⁴ 15 U.S.C. 632.

³⁵ See SBA, Office of Advocacy, “Frequently Asked Questions,” https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf.

³⁶ <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

³⁷ See 13 CFR 120.201, NAICS code 517110.

that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.³⁸ Thus, under this size standard, most firms in this industry can be considered small.

6. **Local Exchange Carriers (LECs).** Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable NAICS code category is Wired Telecommunications Carriers as defined in paragraph 6 of this FRFA. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.³⁹ According to Commission data, census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.⁴⁰ The Commission therefore estimates that most providers of local exchange carrier service are small entities that may be affected by the rules adopted.

7. **Incumbent LECs.** Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS code category is Wired Telecommunications Carriers as defined in paragraph 6 of this FRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁴¹ According to Commission data, 3,117 firms operated in that year. Of this total, 3,083 operated with fewer than 1,000 employees.⁴² Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted. Three hundred and seven

³⁸ http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

³⁹ 13 CFR 121.201, NAICS code 517110.

⁴⁰ http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

⁴¹ 13 CFR 121.201, NAICS code 517110.

⁴² http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

(307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers.⁴³ Of this total, an estimated 1,006 have 1,500 or fewer employees.⁴⁴

8. **Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.** Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS code category is Wired Telecommunications Carriers, as defined in paragraph 6 of this FRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁴⁵ U.S. Census data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees.⁴⁶ Based on this data, the Commission concludes that most Competitive LECS, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers, are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services.⁴⁷ Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees.⁴⁸ In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees.⁴⁹ Also, 72 carriers have reported that they are Other Local Service Providers.⁵⁰ Of this total,

⁴³ See Trends in Telephone Service, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (Trends in Telephone Service).

⁴⁴ Id.

⁴⁵ 13 CFR 121.201, NAICS code 517110.

⁴⁶ http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

⁴⁷ See Trends in Telephone Service, at Table 5.3.

⁴⁸ Id.

⁴⁹ Id.

⁵⁰ Id.

70 have 1,500 or fewer employees.⁵¹ Consequently, based on internally researched FCC data, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities.

9. **Interexchange Carriers (IXCs).** Neither the Commission nor the SBA has developed a definition for Interexchange Carriers. The closest NAICS code category is Wired Telecommunications Carriers as defined in paragraph 6 of this FRFA. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.⁵² U.S. Census data for 2012 indicates that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees.⁵³ According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.⁵⁴ Of this total, an estimated 317 have 1,500 or fewer employees.⁵⁵ Consequently, the Commission estimates that most interexchange service providers are small entities that may be affected by the rules adopted.

10. **Prepaid Calling Card Providers.** Neither the Commission nor the SBA has developed a small business definition specifically for prepaid calling card providers. The most appropriate NAICS code-based category for defining prepaid calling card providers is Telecommunications Resellers. This industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell

⁵¹ Id.

⁵² 13 CFR 121.201, NAICS code 517110.

⁵³ http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

⁵⁴ See Trends in Telephone Service, at Table 5.3.

⁵⁵ Id.

telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual networks operators (MVNOs) are included in this industry.⁵⁶ Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.⁵⁷ U.S. Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees.⁵⁸ Thus, under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities. According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards.⁵⁹ All 193 carriers have 1,500 or fewer employees.⁶⁰ Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by the rules adopted.

11. **Local Resellers.** Neither the Commission nor the SBA has developed a small business size standard specifically for Local Resellers. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁶¹ Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees.⁶² Under this category and the associated small business size standard, the majority of these local resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the

⁵⁶ <http://www.census.gov/cgi-bin/ssd/naics/naicsrch>.

⁵⁷ 13 CFR 121.201, NAICS code 517911.

⁵⁸ http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

⁵⁹ See Trends in Telephone Service, at Table 5.3.

⁶⁰ Id.

⁶¹ 13 CFR 121.201, NAICS code 517911.

⁶² http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

provision of local resale services.⁶³ Of this total, an estimated 211 have 1,500 or fewer employees.⁶⁴ Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by the rules adopted.

12. **Toll Resellers.** The Commission has not developed a definition for Toll Resellers. The closest NAICS code Category is Telecommunications Resellers, and the SBA has developed a small business size standard for the category of Telecommunications Resellers.⁶⁵ Under that size standard, such a business is small if it has 1,500 or fewer employees.⁶⁶ Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees.⁶⁷ Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services.⁶⁸ Of this total, an estimated 857 have 1,500 or fewer employees.⁶⁹ Consequently, the Commission estimates that the majority of toll resellers are small entities.

13. **Other Toll Carriers.** Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable NAICS code category is for

⁶³ See Trends in Telephone Service, at Table 5.3.

⁶⁴ Id.

⁶⁵ 13 CFR 121.201, NAICS code 517911.

⁶⁶ http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

⁶⁷ Id.

⁶⁸ Trends in Telephone Service at Table 5.3.

⁶⁹ Id.

Wired Telecommunications Carriers as defined in paragraph 6 of this FRFA. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.⁷⁰ Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.⁷¹ Thus, under this category and the associated small business size standard, most Other Toll Carriers can be considered small. According to internally developed Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage.⁷² Of these, an estimated 279 have 1,500 or fewer employees.⁷³ Consequently, the Commission estimates that most Other Toll Carriers are small entities.

14. **Wireless Telecommunications Carriers (except Satellite).** This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services.⁷⁴ The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, Census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had fewer than 1,000 employees. Thus, under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of

⁷⁰ 13 CFR 121.201, NAICS code 517110.

⁷¹ http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

⁷² Trends in Telephone Service at Table 5.3.

⁷³ Id.

⁷⁴ NAICS code 517210. See <http://www.census.gov/cgi-bin/ssd/naics/naicsrch>.

wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) services.⁷⁵ Of this total, an estimated 261 have 1,500 or fewer employees.⁷⁶ Thus, using available data, we estimate that the majority of wireless firms can be considered small.

15. **Television Broadcasting.** This Economic Census category “comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public.”⁷⁷ These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for Television Broadcasting firms: those having \$38.5 million or less in annual receipts.⁷⁸ The 2012 Economic Census reports that 751 television broadcasting firms operated during that year. Of that number, 656 had annual receipts of less than \$25 million per year. Based on that Census data we conclude that most firms that operate television stations are small. The Commission has estimated the number of licensed commercial television stations to be 1,383.⁷⁹ In addition, according to Commission staff review of the BIA Advisory Services, LLC’s Media Access Pro Television Database, on March 28, 2012, about 950 of an estimated 1,300

⁷⁵ Trends in Telephone Service at Table 5.3.

⁷⁶ Id.

⁷⁷ U.S. Census Bureau, 2012 NAICS code Economic Census Definitions, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

⁷⁸ 13 CFR 121.201, NAICS code 515120.

⁷⁹ See FCC News Release, “Broadcast Station Totals as of March 31, 2017,” April 11, 2017; https://apps.fcc.gov/edocs_public/attachmatch/DOC-344256A1.pdf.

commercial television stations (or approximately 73 percent) had revenues of \$14 million or less.⁸⁰ We therefore estimate that the majority of commercial television broadcasters are small entities.

16. In assessing whether a business concern qualifies as small under the above definition, business (control) affiliations⁸¹ must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of “small business” is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

17. In addition, the Commission has estimated the number of licensed noncommercial educational television stations to be 394.⁸² These stations are non-profit, and therefore considered to be small entities.⁸³ There are also 2,382 low power television stations, including Class A stations.⁸⁴ Given the nature of these services, we will presume that all LPTV licensees qualify as small entities under the above SBA small business size standard.

⁸⁰ We recognize that BIA’s estimate differs slightly from the FCC total.

⁸¹ “[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both.” 13 CFR 21.103(a)(1).

⁸² See FCC News Release, “Broadcast Station Totals as of March 31, 2017,” April 11, 2017; https://apps.fcc.gov/edocs_public/attachmatch/DOC-344256A1.pdf.

⁸³ See generally 5 U.S.C. 601(4), (6).

⁸⁴ See FCC News Release, “Broadcast Station Totals as of March 31, 2017,” April 11, 2017; https://apps.fcc.gov/edocs_public/attachmatch/DOC-344256A1.pdf.

18. **Radio Broadcasting** This Economic Census category “comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources.”⁸⁵ The SBA has established a small business size standard for this category, which is: such firms having \$38.5 million or less in annual receipts.⁸⁶ Census data for 2012 show that 2,849 radio station firms operated during that year. Of that number, 2,806 operated with annual receipts of less than \$25 million per year.⁸⁷ According to Commission staff review of BIA Advisory Services, LLC’s Media Access Pro Radio Database, on March 28, 2012, about 10,759 (97 percent) of 11,102 commercial radio stations had revenues of \$38.5 million or less. Therefore, most such entities are small entities.

19. In assessing whether a business concern qualifies as small under the above size standard, business affiliations must be included.⁸⁸ In addition, to be determined to be a “small business,” the entity may not be dominant in its field of operation.⁸⁹ We note that it is difficult at times to assess these criteria in the context of media entities, and our estimate of small businesses may therefore be over-inclusive.

20. **Cable Television and Other Subscription Programming.** This industry comprises establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. The broadcast programming is typically narrowcast in nature (e.g., limited format, such as news, sports, education, or youth-oriented). These establishments produce

⁸⁵ <https://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

⁸⁶ 13 CFR 121.201, NAICS code 515112.

⁸⁷ http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

⁸⁸ “Concerns and entities are affiliates of each other when one controls or has the power to control the other, or a third party or parties controls or has the power to control both. It does not matter whether control is exercised, so long as the power to control exists.” 13 CFR 121.103(a)(1) (an SBA regulation).

⁸⁹ 13 CFR 121.102(b) (an SBA regulation).

programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.⁹⁰ The SBA has established a size standard for this industry of \$38.5 million or less. Census data for 2012 shows that there were 367 firms that operated that year. Of this total, 319 operated with annual receipts of less than \$25 million.⁹¹ Thus under this size standard, most firms offering cable and other program distribution services can be considered small and may be affected by rules adopted.

21. **Cable Companies and Systems.** The Commission has developed its own small business size standards for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide.⁹² Industry data indicate that there are currently 4,413 active cable systems in the United States.⁹³ Of this total, all but ten cable operators nationwide are small under the 400,000-subscriber size standard.⁹⁴ In addition, under the Commission's rate regulation rules, a "small system" is a cable system serving 15,000 or fewer subscribers.⁹⁵ Current Commission records show 4,413 cable systems nationwide.⁹⁶ Of this total, 3,900 cable systems have fewer than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records.⁹⁷ Thus, under this standard as well, we estimate that most cable systems are small entities.

⁹⁰ <https://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

⁹¹ http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US-51SSSZ5&prodType=Table.

⁹² 47 CFR 76.901(e).

⁹³ See Eighteenth Competition Report, 32 FCC Rcd at 584, para. 39 (citing the Commission's Cable Operations and Licensing Systems (COALS) database).

⁹⁴ See <https://www.snl.com/web/client?auth=inherit#industry/topCableMSOs> (last visited July 18, 2017).

⁹⁵ 47 CFR 76.901(c)

⁹⁶ See footnote 2, supra.

⁹⁷ August 5, 2015 report from the Media Bureau based on its research in COALS. See www.fcc.gov/coals.

22. **Cable System Operators (Telecom Act Standard).** The Communications Act also contains a size standard for small cable system operators, which is “a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000.”⁹⁸ There are approximately 53 million cable video subscribers in the United States today.⁹⁹ Accordingly, an operator serving fewer than 524,037 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.¹⁰⁰ Based on available data, we find that all but nine incumbent cable operators are small entities under this size standard.¹⁰¹ We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million.¹⁰² Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

23. **Direct Broadcast Satellite (DBS) Service.** DBS Service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic dish antenna at the subscriber’s location. DBS is now included in SBA’s economic census category “Wired

⁹⁸ 47 CFR 76.901 (f) and notes ff. 1, 2, and 3.

⁹⁹ See NCTA Industry Data, Cable’s Customer Base, available at <https://www.ncta.com/industry-data> (last visited July 6, 2017).

¹⁰⁰ 47 CFR 76.901(f) and notes ff. 1, 2, and 3.

¹⁰¹ See <https://www.snl.com/web/client?auth=inherit#industry/topCableMSOs> (last visited July 18, 2018).

¹⁰² The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority’s finding that the operator does not qualify as a small cable operator pursuant to section 76.901(f) of the Commission’s rules. See 47 CFR 76.901(f).

Telecommunications Carriers.” The Wired Telecommunications Carriers industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution; and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.¹⁰³ The SBA determines that a wireline business is small if it has fewer than 1500 employees.¹⁰⁴ Census data for 2012 indicate that 3,117 wireline companies were operational during that year. Of that number, 3,083 operated with fewer than 1,000 employees.¹⁰⁵ Based on that data, we conclude that most wireline firms are small under the applicable standard. However, currently only two entities provide DBS service, AT&T and DISH Network. AT&T and DISH Network each report annual revenues that are in excess of the threshold for a small business. Accordingly, we conclude that DBS service is provided only by large firms.

24. All Other Telecommunications. “All Other Telecommunications” is defined as follows: This U.S. industry is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of

¹⁰³ <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

¹⁰⁴ NAICS code 517110; 13 CFR 121.201.

¹⁰⁵ http://factfinder.census.gov/faces/tableservices.jsf/pages/productview.xhtml?pid+ECN_2012_US.51SSSZ4&prodType=table.

transmitting telecommunications to, and receiving telecommunications from, satellite systems.

Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.¹⁰⁶ The SBA has developed a small business size standard for “All Other Telecommunications,” which consists of all such firms with gross annual receipts of \$32.5 million or less.¹⁰⁷ For this category, census data for 2012 show that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than \$25 million.¹⁰⁸ Thus, most “All Other Telecommunications” firms potentially affected by the rules adopted can be considered small.

25. **RespOrgs.** RespOrgs, i.e., Responsible Organizations, are entities chosen by toll-free subscribers to manage and administer the appropriate records in the toll-free Service Management System for the toll-free subscriber.¹⁰⁹ Although RespOrgs are often wireline carriers, they can also include non-carrier entities. Therefore, in the definition herein of RespOrgs, two categories are presented, i.e., Carrier RespOrgs and Non-Carrier RespOrgs.

26. **Carrier RespOrgs.** Neither the Commission, the U.S. Census, nor the SBA have developed a definition for Carrier RespOrgs. Accordingly, the Commission believes that the closest NAICS code-based definitional categories for Carrier RespOrgs are Wired Telecommunications Carriers¹¹⁰ and Wireless Telecommunications Carriers (except satellite).¹¹¹

¹⁰⁶ <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

¹⁰⁷ 13 CFR 121.201; NAICS code 517919.

¹⁰⁸ http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.

¹⁰⁹ See 47 CFR 52.101(b)

¹¹⁰ 13 CFR 121.201, NAICS code 517110

¹¹¹ 13 CFR 121.201, NAICS code 517210.

27. The U.S. Census Bureau defines **Wired Telecommunications Carriers** as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.¹¹² The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.¹¹³ Census data for 2012 show that there were 3,117 Wired Telecommunications Carrier firms that operated for that entire year. Of that number, 3,083 operated with less than 1,000 employees.¹¹⁴ Based on that data, we conclude that most Carrier RespOrgs that operated with wireline-based technology are small.

28. The U.S. Census Bureau defines **Wireless Telecommunications Carriers (except satellite)** as establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves, such as cellular services, paging services, wireless internet access, and wireless video services.¹¹⁵ The appropriate size standard under SBA rules is that such a

¹¹² <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

¹¹³ 13 CFR 120.201, NAICS code 517110.

¹¹⁴ http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.

¹¹⁵ <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

business is small if it has 1,500 or fewer employees.¹¹⁶ Census data for 2012 show that 967 Wireless Telecommunications Carriers operated in that year. Of that number, 955 operated with less than 1,000 employees.¹¹⁷ Based on that data, we conclude that most Carrier RespOrgs that operated with wireless-based technology are small.

29. **Non-Carrier RespOrgs.** Neither the Commission, the Census, nor the SBA have developed a definition of Non-Carrier RespOrgs. Accordingly, the Commission believes that the closest NAICS code-based definitional categories for Non-Carrier RespOrgs are “Other Services Related To Advertising”¹¹⁸ and “Other Management Consulting Services.”¹¹⁹

30. The U.S. Census defines **Other Services Related to Advertising** as comprising establishments primarily engaged in providing advertising services (except advertising agency services, public relations agency services, media buying agency services, media representative services, display advertising services, direct mail advertising services, advertising material distribution services, and marketing consulting services).¹²⁰ The SBA has established a size standard for this industry as annual receipts of \$15 million dollars or less.¹²¹ Census data for 2012 show that 5,804 firms operated in this industry for the entire year. Of that number, 5,249 operated with annual receipts of less than \$10 million.¹²² Based on that data we conclude that most Non-Carrier RespOrgs who provide TFN-related advertising services are small.

¹¹⁶ 13 CFR 120.201, NAICS code 517120.

¹¹⁷ http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.

¹¹⁸ 13 CFR 120.201, NAICS code 541890.

¹¹⁹ 13 CFR 120.201, NAICS code 541618.

¹²⁰ <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

¹²¹ 13 CFR 120.201, NAICS code 541890.

¹²² <http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?>

31. The U.S. Census defines **Other Management Consulting Services** as establishments primarily engaged in providing management consulting services (except administrative and general management consulting; human resources consulting; marketing consulting; or process, physical distribution, and logistics consulting). Establishments providing telecommunications or utilities management consulting services are included in this industry.¹²³ The SBA has established a size standard for this industry of \$15 million dollars or less.¹²⁴ Census data for 2012 show that 3,683 firms operated in this industry for that entire year. Of that number, 3,632 operated with less than \$10 million in annual receipts.¹²⁵ Based on this data, we conclude that most non-carrier RespOrgs who provide TFN-related management consulting services are small.¹²⁶

32. In addition to the data contained in the four (see above) U.S. Census NAICS code categories that provide definitions of what services and functions the Carrier and Non-Carrier RespOrgs provide, Somos, the trade association that monitors RespOrg activities, compiled data showing that as of July 1, 2016, there were 23 RespOrgs operational in Canada and 436 RespOrgs operational in the United States, for a total of 459 RespOrgs currently registered with Somos.¹²⁷

pid=ECN_2012_US_51SSSZ4&prodType=table.

¹²³ <http://www.census.gov/cgi-bin/sssd/naics.naicsrch>.

¹²⁴ 13 CFR 120.201, NAICS code 514618.

¹²⁵ http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table.

¹²⁶ The four NAICS code-based categories selected above to provide definitions for Carrier and Non-Carrier RespOrgs were selected because as a group they refer generically and comprehensively to all RespOrgs. Therefore, all RespOrgs, including those not identified specifically or individually, must comply with the rules adopted in the Regulatory Fees Report and Order associated with this Final Regulatory Flexibility Analysis.

¹²⁷ Email from Jennifer Blanchard, Somos, July 1, 2016.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

33. This Report and Order does not adopt any new reporting, recordkeeping, or other compliance requirements.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

34. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives, among others: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.¹²⁸

35. This Report and Order adopts new tiers in assessing regulatory fees for submarine cable systems. There should not be a significant impact on small entities because the fee is based on the number of systems and would therefore reflect the size of the entity. In keeping with the requirements of the Regulatory Flexibility Act, we have considered certain alternative means of mitigating the effects of fee increases to a particular industry segment. For example, the Commission has increased the de minimis threshold to \$1,000, which will impact many small entities that pay regulatory fees. This increase in the de minimis threshold to \$1,000 will relieve regulatees both financially and administratively. Regulatees may also seek waivers or other relief on the basis of financial hardship. See 47 CFR 1.1166.

¹²⁸ 5 U.S.C. 603(c)(1)–(c)(4).

F. Federal Rules that May Duplicate, Overlap, or Conflict

None

V. ORDERING CLAUSE

36. Accordingly, **IT IS ORDERED** that, pursuant to Section 9 (a), (b), (e), (f), and (g) of the Communications Act of 1934, as amended, 47 U.S.C. 159(a), (b), (e), (f), and (g) , this Report and Order **IS HEREBY ADOPTED.**

FEDERAL COMMUNICATIONS COMMISSION

Marlene Dortch,

Secretary.

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